

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

No. 04-2338 RSM

**Plaintiffs,**

v.

THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a Utah corporation sole, a/k/a  
"MORMON CHURCH"; LDS SOCIAL  
SERVICES a/k/a LDS FAMILY SERVICES,  
a Utah corporation,

**DEFENDANTS' MOTION TO  
COMPEL PLAINTIFFS FLEMING  
AND DOE's ANSWERS TO  
FIRST INTERROGATORIES  
AND REQUESTS FOR  
PRODUCTION**

**Note on Motion Calendar:  
April 29, 2005**

## I. RELIEF REQUESTED

Defendants move this court for an order compelling plaintiffs Fleming and Doe to provide full and complete responses to all written Interrogatories and Requests for Production.

## II. STATEMENT OF FACTS

This lawsuit arises out of injuries allegedly sustained by plaintiffs when they were allegedly sexually abused by a Mr. Jack LoHolt, while he was allegedly assisting in

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1 scouting activities associated with a troop of the Boy Scouts of America ("BSA")  
 2 sponsored by defendant COP. Plaintiffs allege that defendant COP failed to take  
 3 reasonable action to prevent the sexual abuse from occurring; defendant COP denies  
 4 plaintiffs' allegations.

5 In furtherance of discovery, defendants properly propounded its First  
 6 Interrogatories and Requests for Production of Documents, pursuant to FRCP 33 and  
 7 34. This discovery was mailed to plaintiffs attorneys on February 15, 2005, and  
 8 plaintiffs' responses were due Monday, March 21, 2005.

9 After waiting one week, attorneys for defendants conferred by telephone with  
 10 Michael Pfau on March 28, 2005, and agreed to extend the deadline for full and  
 11 complete responses to Tuesday, April 5, 2005. (See accompanying Declaration of  
 12 Marcus B. Nash, ¶ 3.) Despite agreeing to submit answers by April 5, 2005, plaintiffs  
 13 have failed to do so; to date, no answers have been received.

14 Plaintiffs' failure or refusal to provide Answers to Interrogatories and Request for  
 15 Production in accordance with FRCP 33 and 34 is causing unnecessary and  
 16 unreasonable delay in the discovery which defendant COP is entitled to conduct,  
 17 particularly in light of the case schedule established by this court. Before defendant can  
 18 be prepared to depose plaintiffs, an essential step in preparing this case for trial, the  
 19 interrogatories and requests for production must be answered.

### 20 III. STATEMENT OF ISSUES

21 Should the court: (a) order plaintiffs to provide full and complete responses to  
 22 defendants discovery request within five (5) days of the date of the order granting this  
 23 Motion to Compel is granted, and (b) award terms (per FRCP 37(a)(2), (4)(A) and GR 3)

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1 against plaintiffs and their counsel for failing to submit answers to discovery despite  
 2 reasonable accommodation and liberal extension of time?

3 **IV. EVIDENCE RELIED UPON**

4 1. Defendants rely on the Declaration of Marcus B. Nash and the documents  
 5 attached hereto.

6 **V. AUTHORITY**

7 FRCP 33(b)(1) and (3) state:

8 (1) Each Interrogatory shall be answered separately and fully in writing  
 9 under oath, unless it is objected to, in which event the objecting  
 10 party shall state the reasons for objection and shall answer to the  
 11 extent the interrogatory is not objectionable.

12 ...

13 (3) The party upon whom the interrogatories have been served shall  
 14 serve a cop of the answers, and objections if any, within 30 days  
 15 after the service of the interrogatories.

16 Likewise, FRCP 34(b) provides in pertinent part:

17 The party upon whom the request is served shall serve a written  
 18 response within 30 days after the service of interrogatories...

19 Each of these rules anticipate discovery disputes and provide that the parties may move  
 20 for an order resolving such dispute under Rule 37(a). (See, FRCP 33(b)(5); 34(b).) In  
 21 accordance with FRCP 37(a), defendant COP moves this court for an order compelling  
 22 discovery and appropriate sanctions.

23 There is nothing unusual or complex about the discovery requests propounded  
 24 upon plaintiffs. As the attached exhibits document, counsel for defendants has granted  
 25 plaintiffs more than adequate extension time in which to respond. Plaintiffs' apparent  
 26 reluctance to participate in legitimate discovery frustrates the process of discovery in

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1 this case. Defendants are entitled to complete and timely responses so that discovery  
 2 may proceed and defendants may be prepared for trial.

3 Defendants respectfully request that sanctions be awarded because defendants  
 4 have been forced to prepare and file this motion to compel on account of plaintiffs'  
 5 sustained refusal or failure to participate in discovery.

6 **VI. PROPOSED ORDER**

7 A Proposed Order is attached.

8 **VII. CONCLUSION**

9 Based upon the foregoing analysis of law and argument, defendant respectfully  
 10 requests that his court grant its motion to compel answers to discovery and award  
 11 appropriate sanctions (both monetary and waiver of objections).

12 DATED this 12<sup>th</sup> day of April, 2005.

13 s/ Thomas D. Frey via ECF

14 Thomas D. Frey, WSBA #1908  
 E-mail: tfrey@staffordfrey.com

15 s/ Marcus B. Nash via ECF

16 Marcus B. Nash, WSBA #14471  
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20 Attorneys for Defendants

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## **CERTIFICATE OF SERVICE**

I certify that on the date noted below I electronically filed **Defendant COP's Motion to Compel Plaintiffs Fleming and Doe's Answers to Interrogatories and Requests for Production** using the CM/ECF system which will send notification of such filing to the following persons:

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*Attorneys for Plaintiffs*

DATED this 12<sup>th</sup> day of April, 2005, at Seattle, Washington.

/s/ Mary Ann Jarrett  
Mary Ann Jarrett

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